VII.

Reply to Petitioners' Supporting Brief.

It has been necessary, in the preceding sections of this Opposition to the Petition for Certiorari, to present in some detail the facts reflected in the record, the questions presented, and the reasons relied on by petitioners for the allowance of the writ. Therefore, in the interest of brevity, respondent does not present a formal brief in reply to petitioners' supporting brief; but presents the following succinct answer to the pertinent sections of the argument contained in that brief.

1. Justiciable Controversy. At page 13, the argument is made that there was an absence of any showing that petitioners had threatened to enforce the award. The mere existence of the award, purportedly made under the contract, constituted a threat. Respondent was not required to wait for a suit to be filed by individual employees to enforce the award.[12] Nor was it required to wait longer to determine the nature of its continuing obligations to its employees.

2. Pending Controversy. Under Section II (p. 17) petitioners "assume" that the Board retained jurisdiction over the award, but the directive itself retained no such jurisdiction (Tr. 241). Nor was the Court's jurisdiction ousted by the action of petitioners, after suit was filed, in filing with the Regional War Labor Board their petition for enforcement of the award (on which no action was taken) or in filing with the National Labor Relations Board a petition for a strike vote.[13]

12. *Lehigh Coal & Nav. Co. v. Central R. R. of N. J.*, 33 F. Supp. 362, 367.

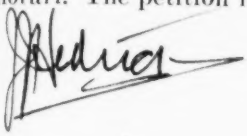
13. Action which petitioners frankly concede was intended "as an economic means of *persuading* respondent to comply with said award". (p. 18 of brief).

3. Exhaustion of Administrative Remedies (p. 23). Since no effective administrative remedy was available to respondent, it is obvious there was no default or failure of respondent. Even if the War Labor Board could have, and had, reserved jurisdiction over the award of the arbitrators, that Board could not have rendered a binding interpretation. It could only recommend. It could not exercise a judicial function. Respondent was entitled to a judicial determination of its rights under the contract and the validity of the arbitration award, tested by the contract.

4. Termination of the Contract (p. 26). We have already demonstrated, in our discussion of the 4th "question presented" (p. 21, *supra*) that the finding of both courts below to the effect that the contract had terminated is required by the undisputed facts. It is not important whether (as stated by petitioners but not shown by evidence) it has become customary for unions to say they wish to "amend" rather than "terminate" their contracts. They should say what they mean. Certainly, in a case like this, where the employer calls for an interpretation of the intention, and the Union replies that it does *not* desire to terminate, but that the contract shall remain in full force and effect until further notice is given, the Union is bound by that interpretation.

Conclusion.

The decisions below are in full accord with adjudicated principles. There is no substance in the petition for certiorari. The petition for a writ should be denied.



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